

## Rural Utilities Service, USDA

## § 1786.32

(1) "Notice of Intent to Prepay the Federal Financing Bank" in the form specified in §1786.33 hereof;

(2) A listing of each FFB loan advance to be prepaid by loan designation, RUS note number, RUS account number, advance date, maturity date, original amount, outstanding balance, and interest rate;

(3) Evidence that the borrower meets the qualification provisions of §1786.28(a) of these regulations;

(4) The certification set forth in part A of the Notice of Intent to Prepay the Federal Financing Bank executed by the chief executive officer of the borrower;

(5) In the event that a borrower submits a prepayment application which proposes to utilize a portion of the financially distressed borrowers' reserve, a certification signed by the chief executive officer of the system to the effect that the borrower is either (i) in default or near default on interest or principal payments due on loans made or guaranteed under the RE Act, and is making a good faith effort to increase rates and reduce costs to avoid or mitigate default; or (ii) participating in a work out or debt restructuring plan with RUS, either as the borrower being restructured or as a borrower providing assistance as part of the work out or restructuring and stating why the borrower is in default or near default.

(b) *Election of Method of Prepayment.* Prior to requesting RUS to schedule a settlement date, the borrower shall (1) elect whether it will use a private loan, internally generated funds, or a combination of a private loan and internally generated funds to make the prepayment, by completing part C of its Notice of Intent to Prepay the Federal Financing Bank; (2) specify in part C of the Notice of Intent to prepay the Federal Financing Bank a date after which a prepayment closing may be scheduled; (3) if appropriate, execute the certification set forth in part C of the Notice of Intent to Prepay the Federal Financing Bank; and (4) return a completed copy of the Notice of Intent to Prepay the Federal Financing Bank to the RUS area office.

(c) *Final Documentation.* All documentation in connection with a proposed prepayment made pursuant to

this subpart shall have been submitted to RUS in final form, no later than 5 business days prior to the settlement date agreed to by the borrower and RUS. To be considered complete, the final documentation shall include the following material:

(1) A completed copy of the Notice of Intent to Prepay the Federal Financing Bank;

(2) In the event that a borrower proposes to utilize a private loan in connection with a prepayment or a portion of a prepayment,

(i) Evidence, in form and substance satisfactory to RUS, that the borrower has an irrevocable commitment from the lender to close the private loan on the settlement date at an interest rate that meets the requirements of §1786.28(c)(1);

(ii) Evidence that the lender meets the qualification provisions of §1786.28(b);

(iii) Evidence that the private loan meets the qualification provisions of §1786.28(c); and

(iv) The final documentation for the private loan;

(3) Estimate of fees, and expenses, including any taxes, in connection with the prepayment transaction;

(4) A certified copy of a resolution of the board of directors of the borrower approving the certification cited above and requesting RUS approval of the prepayment.

(5) In the case of financially distressed borrowers, evidence in form and substance satisfactory to the Administrator that the benefits of prepayment will not be used to reduce rates and that any Federal or state regulatory body having jurisdiction over the borrower's rates has acknowledged its awareness of this requirement;

(6) In the event that borrower is unable to deliver final documentation or the evidence specified in accordance with, §1786.31(c), RUS may reschedule the settlement date at its discretion.

(Approved by the Office of Management and Budget under control number 0572-0088)

### § 1786.32 Settlement procedure.

(a) *General.* Settlements in connection with prepaying FFB loans pursuant to this subpart shall be conducted

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in accordance with the provisions of this section.

(b) *Settlement Date.* The prepayment will be settled and if a private loan is utilized, the guarantee will be delivered, on a settlement date agreed upon by the borrower and RUS. Prior to scheduling a settlement date for a borrower's prepayment pursuant to this subpart, RUS shall have received the material specified in §1786.31(b).

(c) *Place of Settlement.* All settlements will take place in Washington, DC, at a location of the borrower's choosing; provided however, if more than one settlement is proposed for the same settlement date, RUS reserves the right to coordinate the date and location of the settlements with borrowers involved.

(d) *Repayment of FFB.* Prior to 1:00 p.m. prevailing local time in New York, New York, on the settlement date, the borrower shall wire immediately available funds to RUS through the Department of the Treasury account at the Federal Reserve Bank of New York or shall provide for payment to RUS in another manner acceptable to RUS and FFB, in an amount sufficient to pay the outstanding principal of the FFB loan being prepaid plus accrued interest from the last payment date to and including the settlement date.

(e) *Documentation.* The borrower shall deliver, or cause to be delivered to RUS and FFB, not less than 3 business days prior to the settlement date, written notice of the settlement date and a complete listing of each FFB loan advance to be prepaid or partially prepaid, in the format required by §1786.31(a)(2). In the event that a private loan is used in connection with the prepayment, the following executed documents, opinions and material shall be delivered at the settlement:

(1) The guaranteed note evidencing the private loan.

(2) The guarantee.

(3) The loan guarantee agreement.

(4) Copy of the private loan agreement between the lender and the borrower.

(5) Evidence that the borrower has received all approvals which are required under Federal or state law, loan agreements, security agreements, ex-

isting financing arrangements, or any other agreement to which the borrower is a party.

(6) An amendment in recordable form revising the description of the obligations secured by the mortgage including the obligation of the borrower to reimburse RUS for any amounts that RUS may pay under the guarantee.

(7) An approving opinion of the borrower's legal counsel to the effect that the guaranteed note evidencing the private loan is a valid and legally binding obligation of the borrower which is secured under the mortgage, and the priority of the mortgage, as amended pursuant to paragraph (e)(6) of this section, remains undisturbed.

(8) An approving opinion of the lender's legal counsel to the effect that the loan guarantee agreement is a valid and legally binding obligation of the lender.

(9) Such other opinions of counsel as may be required by the Administrator.

(10) Copies of any other documentation required by the lender.

(11) Copies of any other documentation required by RUS to ensure that the obligations of the borrower to reimburse RUS for any amounts that RUS pays under the guarantee or may advance in connection with the private loan are adequately secured under the mortgage.

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#### § 1786.33 Forms.

Guarantees and loan guarantee agreements executed by RUS pursuant to this subpart will be on forms prescribed by RUS. Such forms will include, without limitation, additional details on servicing, procedures for notifying RUS of a default, the manner for requesting payment on a guarantee. The Notice of Intent to Prepay the Federal Financing Bank shall be substantially in the form specified by RUS. RUS may also prescribe standard forms of certifications to be used in connection with materials required to be furnished pursuant to §1786.31 of this subpart.